

Shelley

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
CHARLES L. DIVELBISS, M.D. and
BARBARA DURHAM-DIVELBISS,

Appellants,

v.

CITY OF SEATTLE,

Respondent.

SHB 79-44

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER, the appeal from a denial of an application for a shoreline variance permit by the City of Seattle, came before the Shorelines Hearings Board, Nat. W. Washington, Chairman, David Akana, Chris Smith, David Jamison, Robert Derrick and Jim Williams, in Seattle, Washington on January 7, 1980. Nancy E. Curington, hearing examiner, presided.

Appellants were represented by Barbara Durham-Divelbiss. Respondent was represented by Elizabeth Huneke, Assistant City Attorney.

1 Having heard the testimony, having examined the exhibits, having
2 considered the contentions of the parties, and the Board having served
3 upon the parties its proposed Findings, Conclusions and Order; and
4 having received exceptions to its proposed Findings, Conclusions and
5 Order from appellants, and having considered exceptions from
6 appellants, said exceptions being granted in part and denied in part,
7 the Shorelines Hearings Board makes the following

8 FINDINGS OF FACT

9 I

10 Appellants own property at 10396 Rainier Avenue South in Seattle
11 on the southwesterly shore of Lake Washington, a shoreline of
12 statewide significance. The lot has approximately 123' of water
13 frontage, 97' of street frontage and 120' and 125' along the north and
14 south lot lines, respectively. The residence, built in 1935, is
15 situated 30 feet below the street and 33'6" from the bulkheaded
16 shoreline. There is a 20' x 20' garage abutting the street and a
17 garden shelter, 16' x 20', next to the water.

18 II

19 The appellants' property is located in the single family residence
20 High Density (RS 5000) zone. The shorelines environment is designated
21 urban residential ("U-R").

22 III

23 The shoreline in the area of appellants' property is highly
24 developed with single family residences, most of which have decks on
25 the waterward side of the lots. The residence to the northwest of the
26 appellants' property is 29'9" from the shoreline and includes an
27

1 attached deck extending toward the shore. A 15' x 20' building, with
2 a fireplace, is situated along the bulkhead. The neighboring
3 residence to the southeast of the appellants' property is 35' from the
4 shoreline. Although it once had a deck facing the water, the deck has
5 since been demolished; the house now has an L-shaped deck on the south
6 side of the house. Both neighboring residences are located less than
7 100' from the appellants' residence. Residences adjoining the
8 residences adjacent to appellant's house are situated 12' from the
9 shoreline.

10 IV

11 In March of 1979 appellants decided to remodel their house. The
12 plans included enclosing the existing deck off the dining room on the
13 waterward side and converting it into a new dining room, replacing the
14 existing living room windows with French doors, and constructing a
15 deck, 12' x 22', 21 feet 6 inches from the shoreline. The appellants
16 understood from the City that there was no problem with their plans.
17 Appellants' architect was first told on May 8, 1979, that no shoreline
18 variance was required for the proposal; on May 17, 1979, the architect
19 was informed that a variance would be required. After obtaining a
20 building permit for the dining room, kitchen and French doors
21 remodeling, appellants proceeded with their remodeling plans in late
22 spring-early summer of 1979. Appellants proceeded without receiving a
23 building permit for their proposed deck. On June 28, 1979, appellants
24 were officially informed that a shoreline variance permit would be
25 required for the proposed deck because of the setback provisions of
26 the Seattle Shorelines Master Program (hereinafter "SSMP").
27

1 Appellants' application for such variance was denied by the City; such
2 denial is the subject of the instant appeal.

3 V

4 Appellants proposed remodeling was on an existing house
5 constructed in approximately 1935. There are existing traffic
6 patterns in the house which direct the flow of people entering the
7 home into the living room and out towards the water. In order to
8 reach the dining or southeast side of the yard, the traffic flow would
9 have to go through the living room, kitchen, and out into the yard.
10 The City proposed that appellants build their proposed deck off the
11 southeast side of the home which is a preexisting kitchen. In order
12 to do so, appellants would have to cover a concrete walkway which
13 provides access for pedestrian traffic from the sidewalk to the
14 waterfront as well as a basis for moving garden equipment, and other
15 materials relevant to the use and enjoyment of appellants' dock and
16 boat. Further, any deck constructed on that side of the home would be
17 visible from Rainier Avenue and, therefore, devoid of privacy. The
18 only area of yard which would support a deck that would allow some
19 privacy would be the area appellants propose.

20 VI

21 Letters have been filed from both appellants' adjoining neighbors
22 and a third neighbor two houses away supporting appellants' proposed
23 deck. The proposed deck would not be visible at all to the neighbor
24 on the northwest and, although could be seen by the neighbor to the
25 southeast from a few windows in their house, would not obstruct any
26 view of the shoreline or water. The only "view" that would be
27

1 obstructed by any possible individual would be of the small portion of
2 appellants' front yard grass that would be covered.

3 VII

4 Any Conclusion of Law which should be deemed a Finding of Fact is
5 hereby adopted as such.

6 From these Findings, the Board comes to these

7 CONCLUSIONS OF LAW

8 I

9 The Board has jurisdiction over the persons and over the subject
10 matter of this proceeding.

11 II

12 The SSMP states "Residential structures shall not be located
13 closer to the shoreline than adjacent structures. If there is no other
14 structure within 100 feet, residential structures shall be located at
15 least 25 feet back from the line of higher regulated lake level of
16 Lake Washington . . ." (Section 21A.35(c)). Since there are
17 structures within 100 feet, the proposed deck must not be located
18 closer to the shoreline than "adjacent structures."

19 III

20 The SSMP contains no definition of the phrase "adjacent
21 structures." In Superintendent's Ruling 14-79, effective
22 November 15, 1979, after this variance was denied, the City
23 interpreted the term as referring only to "principal structures," as
24 opposed to all structures, and determined that the small building on
25 the lot of the appellants' northwest neighbors, which was located
26 along the water, was an "accessory structure." Consequently, the two
27

1 neighboring residences, 29'9" and 35' from the shoreline, constituted
2 the adjacent structures between which a line was subtended for
3 purposes of the residential setback line. Under this theory, the
4 proposed deck, 21'6" from the shoreline, would extend beyond the
5 setback line and require a variance. We do not rely upon the ruling
6 for support of our interpretation of the SSMP.

7 IV

8 The Board interprets the language of the SSMP as establishing a
9 setback line by subtending a line between adjacent principal
10 structures including decks. This construction of the SSMP provision
11 gives effect to the terms of the SMP and the policies sought to be
12 promoted. Although it appears that some type of deck might be
13 constructed without a variance, it is clear that appellant's proposed
14 deck would nevertheless require a variance from the setback line.

15 V

16 The SSMP requires several conditions to be met before a Shorelines
17 variance permit can be issued.¹ To meet those conditions,
18 applicants for variance must demonstrate, among other things, that
19

21 1. SECTION 21A.61 SHORELINE VARIANCES.

22 In specific cases the Director with approval of the Depart-
23 ment of Ecology may authorize variances from specific requirements
24 of this Article when there are practical difficulties or
25 unnecessary hardships in the way of carrying out the strict
26 letter of the shoreline master program. A shoreline variance
27 will be granted only after the applicant can demonstrate the
following:

1 strict application of the SSMP would prevent the applicants from
2 making any reasonable use of the subject property. In this case, the
3 applicants currently have the use of their property as a single family
4 residence. Under the terms of the SSMP, the applicants have not
5 demonstrated that denial of the variance would preclude any reasonable
6 use of their property. Consequently, the application for a shorelines
7 variance permit for construction of a deck beyond the setback line was
8 properly denied by the City and should be affirmed².

9 VI

10 There are no reasons to deny appellants' proposed development
11 based upon interference with anyone's use or enjoyment of the
12

14 1. Cont.

- 15 (a) That if he complies with the provisions of the master
16 program, he cannot make any reasonable use of this
17 property. The fact that he might make a greater profit
18 by using his property in manner contrary to the intent
19 of the program is not a sufficient reason for a variance.
- 20 (b) That the hardship results from the application of the
21 requirements of the Act and shoreline master programs,
and not, for example, from deed restrictions or the
applicant's own actions.
- 22 (c) That the variance granted will be in harmony with the
23 general purpose and intent of the shoreline master program.
- 24 (d) That the public welfare and interest will be preserved.

25 In authorizing a shoreline variance, the Director may attach
26 thereto such conditions regarding the location, character or other
27 features of a proposed structure or use as may be deemed necessary
to carry out the spirit and purposes of this Article and in the
public interest.

2. We note that there is a proposal to amend the SSMP to conform
with the Department of Ecology criteria, which may produce a
different result.

1 shoreline or detrimental effect upon aquatic life or wildlife.
2 However, we must uphold the denial based upon the SSMP variance
3 criteria.

4 VII

5 Any Finding of Fact which should be deemed a Conclusion of Law is
6 hereby adopted as such.

7 From these Conclusions the Board enters the following

8
9 ORDER

10 The denial of the application for a shoreline variance permit by
11 the City of Seattle is affirmed.

12 DATED this 5th day of May, 1980.

13 SHORELINES HEARINGS BOARD

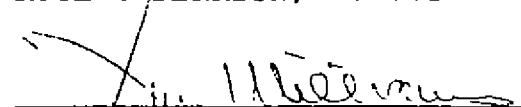
14 
15 NAT W. WASHINGTON, Chairman
16

17 _____
18 DAVID AKANA, Member

19 _____
20 CHRIS SMITH, Member

21 
22 DAVID JAMISON, Member

23 
24 ROBERT DERRICK, Member

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26 JIM WILLIAMS, Member

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER